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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

FILE: [redacted] Office: HONOLULU, HI

Date: **AUG 28 2006**

IN RE: Applicant: [redacted]

PETITION: Application for Certificate of Citizenship under section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Honolulu, Hawaii, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The record reflects that the applicant was born in the Commonwealth of the Northern Mariana Islands (CNMI) on December 8, 1986. The applicant's father, [REDACTED] was also born in the CNMI on December 18, 1928, and he is a U.S. citizen. The applicant's mother, [REDACTED] was born in The Philippines on November 1, 1958 and remains a citizen of that country. The applicant's parents were married on March 18, 1988.

The director denied the application under section 320 of the Immigration and Nationality (the Act), 8 U.S.C. § 1431.

The applicant is a lawful permanent resident who resides in the CNMI with his U.S. citizen father who does not have legal custody of him. Accordingly, the AAO agrees that he is not eligible for a certificate of citizenship under the provisions of section 320 of the Act. However, it finds that the applicant's claim to U.S. citizenship must also be considered under the provisions of section 301(g) of the Act, 8 U.S.C. § 1401, which confers citizenship at birth to:

a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: Provided, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C.288) by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person

(A) honorably serving with the Armed Forces of the United States, or

(B) employed by the United States government or an international organization as defined in section 1 of the International Organizations Immunities Act, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952 to the same extent as if it had become effective in its present form on that date

The record appears to establish that the applicant's father became a U.S. citizen pursuant to the provisions of Pub. L. 94-241, which conferred U.S. citizenship on certain inhabitants of the CNMI as of November 4, 1986 who did not owe allegiance to the United States or to any other country, including individuals, like the applicant's father, who were born in the CNMI. Accordingly, the issue before the AAO is whether the

applicant who was born approximately one month after his father became a U.S. citizen may have acquired U.S. citizenship as of the date of his birth under the provisions of section 301(g) of the Act.

In the instant case, the applicant was born approximately 15 months before his parents married and, therefore, must satisfy the requirements of section 309 of the Act, 8 U.S.C. § 1409, for children born out of wedlock. These requirements allow the provisions of section 301 (g) of the Act to be applied to the applicant only if: a blood relationship is established between the applicant and his father by clear and convincing evidence; his father had the nationality of the United States at the time of his birth; his father has agreed in writing to provide financial support for the applicant until he reaches 18 years of age; and while the applicant is under 18 years of age, he is legitimated under the law governing his residence or domicile, his father acknowledges his paternity in writing under oath, or the applicant's paternity is established by the adjudication of a competent court. The AAO finds the evidence of record – the copies of the applicant's birth certificate identifying his father; his father's birth certificate and U.S. passport; the divorce decree ending the marriage of the applicant's parents, which stipulates his father's financial responsibilities regarding him and his siblings, and is signed by his father; and his parents' marriage certificate – to meet the requirements of section 309 of the Act.

Therefore, the AAO will withdraw the director's decision and remand the instant case to the director for a decision as to whether the applicant may establish eligibility under section 301(g) of the Act, 8 U.S.C. § 1401. The director may request such evidence as may be necessary to assist him in reaching that determination, including evidence related to the residence of the applicant's father between his birth in 1928 and the applicant's birth in 1986, as well as any qualifying employment and/or military service. The director shall then issue a new decision based on the evidence of record, as it relates to the statutory requirements applicable to the applicant's circumstances .

Order: The matter is remanded for action consistent with the above discussion.